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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

THOMAS W. MCNAMARA, as the Court-Appointed Monitor for AMG Capital Management, LLC; BA Services LLC; Black Creek Capital Corporation; Broadmoor Capital Partners, LLC; Park 269, LLC; C5 Capital LLC; DF Services Corp.; DFTW Consolidated [UC] LLC; Impact BP LLC; Level 5 Apparel LLC; Level 5 Capital Partners LLC; Level 5 Eyewear LLC; Level 5 Motorsports, LLC; Level 5 Scientific LLC; NM Service Corp. (f/k/a/ National Money Service); PSB Services LLC; Real Estate Capital LLC (f/k/a/ Rehab Capital I, LLC); Sentient Technologies; ST Capital LLC; Westfund LLC; Eclipse Renewables Holdings LLC; Scott Tucker Declaration of Trust, dated February 20, 2015; West Race Cars, LLC; and Level 5 Management LLC; and their successors, assigns, affiliates, and subsidiaries,

Plaintiff,

v.

SELLING SOURCE, LLC; PARTNERWEEKLY L.L.C.; MONEYMUTUAL, LLC; DATAX, LTD.; LONDON BAY CAPITAL LLC; LONDON BAY-TSS HOLDING COMPANY, LLC; LONDON BAY-TSS ACQUISITION COMPANY, LLC; DEREK LAFAVOR; GLENN MCKAY; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

CASE NO.

**MONITOR'S COMPLAINT FOR:  
(1) FRAUDULENT TRANSFER;  
(2) QUASI-CONTRACT CLAIM FOR  
RESTITUTION BASED ON UNJUST  
ENRICHMENT; AND  
(3) ACCOUNTING**

**JURY TRIAL DEMAND**

1 Plaintiff, Thomas W. McNamara (“Plaintiff” or “Monitor”), in his capacity as court-  
 2 appointed Monitor, hereby brings the following Complaint against Selling Source, LLC (“Selling  
 3 Source”), PartnerWeekly L.L.C. (“Partner Weekly”), DataX, Ltd. (“DataX”), MoneyMutual, LLC  
 4 (“MoneyMutual”), London Bay Capital LLC (“London Bay”), London-Bay-TSS Holding  
 5 Company, LLC, and London Bay-TSS Acquisition Company, LLC, Derek LaFavor (“LaFavor”),  
 6 and Glenn McKay (“McKay,” and collectively, “Defendants”) and alleges the following:

### 7 PARTIES

8 1. Plaintiff is the Court-appointed Monitor in the related case *Federal Trade*  
 9 *Commission v. AMG Services, Inc., et al.*, 2:12-cv-00536-GMN (VCF) (D. Nev.) (“*FTC v. AMG*  
 10 *Services*”), appointed by the Order Appointing Monitor and Freezing Assets entered November  
 11 30, 2016 (ECF No. 1099) (the “Monitor Order”). A true and correct copy of the Monitor Order  
 12 issued in *FTC v. AMG Services* is attached as Exhibit A hereto and incorporated by reference. The  
 13 Monitor Order directs the Monitor, *inter alia*, to preserve the value of the assets in the Monitorship  
 14 Estate and authorizes the Monitor, *inter alia*, to institute actions to preserve or recover those assets.  
 15 *See id.* at 12.

16 2. The Monitor Order defines the Monitorship Estate to include, *inter alia*, all assets  
 17 of Scott Tucker (the individual defendant in *FTC v. AMG Services*) (“Tucker”) and all assets of  
 18 the “Monitor Entities” which are identified to include: the corporate defendants named in *FTC v.*  
 19 *AMG Services* (AMG Capital Management, LLC, Level 5 Motorsports, LLC, Black Creek Capital  
 20 Corporation, and Broadmoor Capital Partners, LLC); the corporate relief defendant named in *FTC*  
 21 *v. AMG Services* (Park 269, LLC); and multiple Tucker related and controlled entities: BA  
 22 Services LLC, C5 Capital LLC, DF Services Corp., DFTW Consolidated [UC] LLC, Impact BP  
 23 LLC, Level 5 Apparel LLC, Level 5 Capital Partners LLC, Level 5 Eyewear LLC, Level 5  
 24 Scientific LLC, NM Service Corp. (f/k/a/ National Money Service), PSB Services LLC, Real  
 25 Estate Capital LLC (f/k/a/ Rehab Capital I, LLC), Sentient Technologies, ST Capital LLC,  
 26 Westfund LLC, Eclipse Renewables Holdings LLC, Scott Tucker Declaration of Trust, dated  
 27 February 20, 2015, West Race Cars, LLC, and Level 5 Management LLC, and their successors,  
 28 assigns, affiliates, and subsidiaries.

1           3. Defendant Selling Source, LLC is a Delaware limited liability company. Selling  
2 Source is a holding company that owns other entities and provides Internet marketing services to  
3 entities in the payday lending industry. Together with Partner Weekly, DataX, and other related  
4 subsidiaries the “Selling Source Defendants”. Selling Source’s related subsidiaries included  
5 Optimized Contact Solutions, Ltd. and TeleWeb Marketing, L.L.C., which were merged out of  
6 existence in 2007.

7           4. Defendant PartnerWeekly L.L.C. is a Nevada limited liability company engaged in  
8 the business of marketing and generating Internet leads for sales to payday lenders, who are Partner  
9 Weekly’s customers. Partner Weekly is Selling Source’s primary operating subsidiary and acts as  
10 Selling Source’s agent in running [www.MoneyMutual.com](http://www.MoneyMutual.com).

11           5. Defendant DataX, Ltd. is a Nevada limited liability company and a credit reporting  
12 agency. During the relevant time period, DataX provided consumer credits reports to third parties,  
13 including the payday lending industry.

14           6. Defendant MoneyMutual, LLC is a Nevada limited liability company and acts  
15 primarily as a holding company for the MoneyMutual brand, including [www.MoneyMutual.com](http://www.MoneyMutual.com).  
16 During the relevant time period, MoneyMutual advertised payday loans and other short-term  
17 lending products online to consumers through its websites. Defendant Partner Weekly launched  
18 the MoneyMutual brand in 2009.

19           7. Defendant London Bay Capital LLC is a Delaware limited liability company and a  
20 private equity company. London Bay acquired Selling Source from Monitor Entity Black Creek  
21 Capital Corporation (“Black Creek Capital”) in December 2007. London Bay is the controlling  
22 member of London-Bay-TSS Holding Company, LLC.

23           8. Defendant London-Bay-TSS Holding Company, LLC is a Delaware limited  
24 liability company and the controlling member of London Bay-TSS Acquisition Company, LLC.

25           9. Defendant London Bay-TSS Acquisition Company, LLC is a Delaware limited  
26 liability company and the controlling member of Selling Source. Defendants London Bay, London  
27 Bay-TSS Acquisition Company, LLC, and Defendant London-Bay-TSS Holding Company, LLC  
28 are collectively referred to as the “London Bay Defendants.”

1           10. Defendant Derek LaFavor is the former co-owner with Tucker of the Selling Source  
2 Defendants and was the CEO of Selling Source for 12 years. He worked at Selling Source from  
3 1997 to 2010. Subsequent to the sale of the Selling Source Defendants to the London Bay  
4 Defendants, he continued to work there as CEO and, on information and belief, maintained minor  
5 equity stakes in the Selling Source Defendants after the sale. He is a resident of Las Vegas,  
6 Nevada.

7           11. Defendant Glenn McKay is currently the President and CEO of Selling Source. He  
8 joined Selling Source in 2000 and worked there both before and after the sale of the Selling Source  
9 Defendants to the London Bay Defendants. He is a resident of Las Vegas, Nevada.

10           12. The true names or capacities, whether individual, corporate, associate, or otherwise,  
11 of defendants herein designated as DOE I through DOE X and ROE CORPORATION I through  
12 ROE CORPORATION X are unknown to Plaintiff, who therefore sue said Defendants by such  
13 fictitious names. Plaintiff believes and thereon alleges that other defendants named as DOE and  
14 ROE CORPORATION defendants are responsible in some manner for the acts complained of  
15 herein and described more fully *infra*. Plaintiff will seek to amend this Complaint to allege their  
16 true names and capacities as they are ascertained in this action.

17           13. The Monitor is informed and believes, and on that basis alleges, that Defendants  
18 acted at all times mentioned herein as the actual and/or ostensible agents or representatives of each  
19 other and, in doing the activities alleged herein, acted within the scope of their authority as agents  
20 and representatives, and with the permission and consent of each other. In undertaking the acts  
21 alleged herein, each Defendant was acting in concert with the other Defendants, and as each other's  
22 alter egos.

### 23                                   **JURISDICTION AND VENUE**

24           14. This Court has jurisdiction over this matter under 28 U.S.C. § 754, § 28 U.S.C.  
25 § 1345, and 28 U.S.C. § 1367(a), and the doctrines of supplemental and ancillary jurisdiction. *See*  
26 *S.E.C. v. Bilzerian*, 378 F.3d 1100, 1107 (D.C. Cir. 2004) (“the receiver’s complaint was brought  
27 to accomplish the objectives of the Receivership Order and was thus ancillary to the court’s  
28 exclusive jurisdiction over the receivership estate”).



1 equity stake in December 2007 to the London Bay Defendants. The Selling Source Defendants  
2 served as the “lead generators,” whose job it was to attract and find potential borrowers, collect  
3 personal information from the borrowers, and then refer them – for a hefty fee – to lenders, which  
4 then provided the illegal payday loans.

5 22. Defendants’ biggest customer was Tucker and his intricate web of payday lending  
6 entities based in Overland Park, Kansas. This was the case both before and after Tucker sold his  
7 ownership interest in the Selling Source Defendants. Tucker entities paid Defendants a fee for  
8 every customer lead. In fact, as part of the transaction when the London Bay Defendants purchased  
9 the Selling Source Defendants from Tucker and others, Tucker agreed that his payday lending  
10 businesses would continue to exclusively buy leads from the Selling Source Defendants.

11 23. By virtue of their close affiliation with Tucker and his business entities, Defendants  
12 possessed intimate knowledge of Tucker’s aggressive business practices and well understood  
13 Tucker’s complete control of and domination over the enterprise, including the Monitor Entities  
14 and the tribal entities. Defendants were well aware of mounting red flags reflecting Tucker was  
15 operating an illegal business. They not only knew about state regulatory investigations, consumer  
16 complaints, and the FTC’s action, but also had immediate access to and an understanding of the  
17 inner workings of Tucker’s operations in Overland Park, Kansas. Accordingly, Defendants had  
18 every opportunity to investigate and verify the many concerns and allegations continually raised  
19 against Tucker and his Overland Park web of payday lending businesses. Thus, Defendants knew  
20 or should have known that monies received from Tucker’s operations were not rightfully theirs.  
21 Rather, those monies belonged to the Monitorship Estate and were the proceeds of an ongoing  
22 common fraudulent enterprise operated and directed by Tucker.

23 24. The millions of dollars in transfers resulted in exorbitant sums being paid to  
24 Defendants long after both the harsh light that the media shined on Tucker’s businesses in fall  
25 2011 and the FTC’s lawsuit brought in April 2012.

26 **FTC v. AMG Services**

27 25. The Complaint in *FTC v. AMG Services*, filed April 2, 2012, alleged that Tucker  
28 and his related entities operated a massive common enterprise from Overland Park, Kansas

1 engaged in illegal and deceptive practices by, *inter alia*, offering consumers payday loans via  
2 disclosures that misled them about the true cost of the loan, requiring that consumers pre-authorize  
3 electronic fund transfers, and engaging in unlawful debt collection practices.

4       26.     The Complaint alleged violations of Section 5(a) of the FTC Act which prohibits  
5 deceptive acts or practices in commerce, the Truth in Lending Act which requires full and accurate  
6 disclosure of the true costs of the loan, and the Electronic Funds Transfer Act which prohibits  
7 conditioning the extension of credit on a consumers' preauthorization of electronic funds transfers.

8       27.     In addition to Tucker, the named defendants in *FTC v. AMG Services* included  
9 Tucker's loan servicing companies (AMG Services, Inc. (which had "merged" with CLK  
10 Management LLC), NM Service Corp., and Universal Management Services, Inc.), the three  
11 Indian tribal entities through which Tucker operated and controlled (Red Cedar Services, Inc.,  
12 SFS, Inc. and MNE Services, Inc.), and the four Tucker corporate lending companies (AMG  
13 Capital Management, LLC, Level 5 Motorsports LLC, Black Creek Capital, and Broadmoor  
14 Capital Partners, LLC). The Complaint also alleged that Tucker centrally operated and controlled  
15 these businesses from Kansas as a common enterprise and he directed and controlled the entities,  
16 and had signatory authority on every corporate bank account.

17       28.     As described herein, Partner Weekly was initially named as a defendant in *FTC v.*  
18 *AMG Services*, but later dismissed without prejudice.

19       29.     The Court bifurcated the proceedings into two phases. During Phase I, the Court  
20 adjudicated the merits of the FTC's claims for violations of the FTC Act, TILA, and EFTA. During  
21 Phase II, the Court adjudicated remaining issues, including individual liability, affirmative  
22 defenses, and remedies.

23       30.     As to Phase I, on May 28, 2014, the Court granted summary judgment in favor of  
24 the FTC and against Tucker and other defendants on Count I (Deceptive Acts and Practices in  
25 violation of the FTC Act) and Count III (Violations of TILA and Regulation Z). *See FTC v. AMG*  
26 *Services*, ECF No. 584.

27       31.     In 2015, the Court entered permanent injunctions and monetary judgments against  
28 the three tribal lending entities that were fronts for Tucker's operations – Order of January 23,



1 2015, against MNE Services, Inc. for \$21 million (ECF No. 727); Orders of November 25, 2015  
2 against Red Cedar and SFS for \$2.2 million each (ECF Nos. 888-89).

3 32. As to Phase II, on September 30, 2016, the FTC's motion for summary judgment  
4 against Tucker, Level 5 Motorsports, LLC, Black Creek Capital Corporation, and AMG Capital  
5 Management, LLC, among others, was granted. A true and correct copy of the Order Granting  
6 Summary Judgment issued in *FTC v. AMG Services* is attached as Exhibit B hereto and  
7 incorporated by reference. The Court entered a judgment in the amount of \$1,301,897,652 as  
8 equitable monetary relief. *See id.* at 29.

9 33. The Court found that Tucker structured the tribal lending entities based in Overland  
10 Park to be completely dependent on the Tucker loan servicing companies also based in Overland  
11 Park, and that Tucker and his related entities operated as a common enterprise and were thus jointly  
12 and severally liable. *Id.* at 12, 18.

### 13 **The Monitor**

14 34. On November 30, 2016, the Court entered the Monitor Order to facilitate post-  
15 judgment collection and enforcement of the previously entered asset freezes. *See FTC v. AMG*  
16 *Services*, ECF No. 960 and 1030. The Monitor Order includes a similar asset freeze provision.  
17 *Compare FTC v. AMG Services*, ECF No. 960 at 14 with *FTC v. AMG Services*, ECF No. 1099  
18 at 6.

19 35. The Monitor Order granted the Monitor wide powers to preserve the value of the  
20 Monitorship Estate assets under the Asset Freeze Order, including but not limited to obtaining or  
21 creating an accounting of the assets and preventing the transfer, withdrawal or misapplication of  
22 the assets. *See Exhibit A* at 12.

23 36. The Monitor Order further authorized the Monitor to conduct such investigation  
24 and discovery as may be necessary to locate and account for additional assets and to "[i]nstitute,  
25 compromise, adjust, appear in, intervene in, or become a party to such actions or proceedings in  
26 state, federal or foreign courts that the Monitor deems necessary and advisable to preserve or  
27 recover the Monitorship Estate or to carry out the Monitor's mandate under this order." *See*  
28 *Exhibit A* at 13-15.



1           37.     Until the appointment of the Monitor, Tucker had exercised full, complete, and  
2 exclusive control of, and domination over, the Monitor Entities. Certain assets of the Monitor  
3 Entities were nominally held by tribal entities also under Tucker's control through a sham  
4 relationship.

5           38.     Prior to the Monitor's appointment, Tucker took no actions to prevent or vindicate  
6 the harms caused to the Monitorship Estate by the fraudulent transfers to Defendants among others.  
7 While Tucker remained in control of the Monitor Entities, the fraudulent transfers to Defendants  
8 were concealed and only became discoverable and legally actionable after the Monitor had been  
9 appointed and empowered to bring suit to recover such assets.

10          39.     During the course of his investigation, the Monitor identified transfers of  
11 Monitorship Estate assets to Defendants, which rightfully belong to the Monitorship Estate. The  
12 Monitor brings this action to void these fraudulent transfers and to claw back from these  
13 Defendants.

14     **Tucker's Criminal Conviction**

15          40.     In February of 2016, Tucker, along with his attorney, Timothy Muir ("Muir"), was  
16 indicted on fourteen felony counts in the Southern District of New York in connection with the  
17 payday lending enterprise operating out of Overland Park, Kansas.

18          41.     The Superseding Indictment, filed on November 30, 2016, included allegations that  
19 the loan disclosures were materially false and misleading in setting forth the overall cost of the  
20 loan to the consumer; the loans were made at usurious rates; and Tucker sought to shield these  
21 illegal operations through sham transactions that made it appear that the lenders were Native  
22 American tribal entities immune from state usury laws.

23          42.     On October 13, 2017, Tucker and Muir were convicted on all fourteen counts  
24 charged in the Superseding Indictment.

25     **Tucker's Fraudulent Payday Lending Activities**

26          43.     From 1997 through at least 2013, Tucker founded, controlled, and dominated a web  
27 of illegal payday lending companies based in Kansas. For the vast majority of the time, Tucker's

28     ///

1 enterprise was located at the same address, 10895 Lowell Avenue, Overland Park, Kansas. These  
2 companies marketed and serviced short-term payday loans.

3 44. Tucker's companies included the three loan servicing companies, NMS, CLK  
4 Management LLC ("CLK"), and Universal Management Services, Inc. ("UMS") (collectively the  
5 "Loan Servicing Companies." See Exhibit B at 3. UMS is a subsidiary of NMS.

6 45. CLK was formed by Tucker as a Kansas entity to provide an operational umbrella  
7 for all of his portfolios. As described by Tucker's counsel in a 2009 mediation brief, "Since Tucker  
8 was in Kansas operating and managing the NMS' portfolio inside the County Bank Program, as  
9 well as the Nominee Portfolio Companies and their portfolios which were outside of the County  
10 Bank Program, Tucker decided to form a single Kansas entity that would provide the operational  
11 umbrella for all of the portfolios." This entity was CLK, which operated under Tucker's direction  
12 and control from the same Overland Park address. CLK performed a variety of tasks, including  
13 acquiring equipment for the benefit of the other portfolios, hiring employees, renting space,  
14 contracting with outside vendors, and paying for everything necessary to operate the portfolios.

15 46. CLK later "merged" with AMG Services, Inc. ("AMG Services"), another tribal  
16 entity, in an effort to bring its operations within the tribe's sovereign immunity. This "merger"  
17 was accomplished by a scheme orchestrated by Tucker, with the assistance of counsel who filed a  
18 sham lawsuit in Kansas court to confirm the "merger". See *U.S. v. Scott Tucker*, 254 F. Supp. 620,  
19 622-23 (S.D.N.Y. 2017) (applying crime-fraud exception to documents relating to Kansas lawsuit,  
20 because of government's evidence showing probable cause that lawsuit was a "'sham' lawsuit  
21 orchestrated for the purpose of invoking tribal immunity as to defendants' allegedly usurious  
22 lending practices").

23 47. Tucker managed, owned, operated, controlled, and dominated the tribal lenders, the  
24 service companies, and the corporate lenders and the other Monitor Entities from his base of  
25 operations in Overland Park, Kansas, where at one point in excess of 600 employees worked.

26 *The Rent-a-Bank Model*

27 48. In order to skirt usury laws in effect in most states, beginning in or about 1997,  
28 Tucker and his business partners, including Charles Hallinan, invoked an illegal "rent-a-bank

1 model” by which they “exported” interest rates from County Bank of Rehoboth, Delaware  
2 (“County Bank”), which was incorporated in a state with no usury laws. This provided the  
3 appearance of legitimacy with County Bank as the front for the payday lender, while the actual  
4 lender controlled by Tucker would claim only to “service” the loan.

5 49. Tucker knew that this set-up was a sham in violation of the law and knew that the  
6 bank did not control the loan approval process or fund the loans, but was paid to act as a front for  
7 the illegal enterprise.

8 50. In 2003, the States of Kansas, Colorado, and California sued Tucker and certain of  
9 his payday lending operations for violation of anti-usury laws.

10 *The Rent-a-Tribe Model*

11 51. Beginning in 2003, Tucker embraced a new model in which he funneled activities  
12 through corporate entities nominally owned by various Native American tribes to invoke the  
13 sovereign immunity of the tribes and avoid legal restrictions. This model was based on the sham  
14 that the tribes owned and controlled the entities when, in fact, Tucker did so.

15 52. To implement this model, between 2003 and 2008, Tucker’s loan servicing  
16 companies entered into agreements with several tribes to become “authorized lenders” for his  
17 companies. *See* Exhibit B at 3; *see also* *FTC v. AMG Services*, ECF Nos. No. 908-02, 908-014,  
18 908-015 (Agreements). The tribes, in turn, formed new corporate entities to facilitate these payday  
19 loans, including MNE Services, Inc., Red Cedar Services, Inc., and SFS, Inc. *See* Exhibit B at 3.

20 53. As part of these efforts, Tucker’s companies assigned to the tribal entities multiple  
21 trademarks related to websites used by Tucker to offer payday loans. *See* Exhibit B at 14-16; *see*  
22 *also* *FTC v. AMG Services*, ECF No. 908-6 (Trademark assignment records).

23 54. While Tucker wanted to create the appearance that the tribal entities had a  
24 substantive role in the operations, in reality, as Tucker knew, the tribes were no more than conduits  
25 for Tucker’s unlawful payday lending businesses.

26 55. In February 2016, tribal entities AMG Services and MNE Services, Inc., which  
27 were corporations nominally established by the Miami Tribe of Oklahoma, entered into a Non-  
28 Prosecution Agreement with the U.S. Attorney’s Office for the Southern District of New York, in

1 which they admitted and affirmed that Tucker had complete control of the tribal entities.

2 Specifically, the tribal entities admitted the following facts as true:

3 1. In late 2003, representatives of The Miami Tribe of  
4 Oklahoma ("The Miami") learned that Scott Tucker owned and  
5 operated a business that made "payday loans." In or around  
6 November 2003, The Miami received a letter of intent from National  
7 Money Service, a company controlled by Tucker, contemplating a  
8 "Pay Day Loan Business Agreement" between The Miami and  
9 Universal Management Services, Inc. ("UMS"), a company also  
10 controlled by Tucker. Under the letter, a tribal entity would "become  
11 an authorized lender" and "earn substantial income," while "relying  
12 upon" National Money Service "to provide not only the capital to  
13 fund all loan transactions and all working capital requirements, but  
14 also the personnel, equipment, marketing and knowledge to make  
the business an immediate success." The letter was followed by a  
written agreement between the Miami Tribe of Oklahoma Business  
Enterprises ("MTBE") and UMS. The agreement provided that  
MTBE would conduct business in the name "Tribal Financial  
Services" ("TFS"), and that MTBE would receive a monthly fee and  
cooperate with UMS "to do all things reasonable [sic] necessary to  
carry on the payday loan business as may be required by UMS." It  
was understood that this duty to cooperate included a duty of MTBE  
and TFS to invoke tribal sovereign immunity in response to any  
efforts by state governments to regulate or impose sanctions or  
prohibitions on such "payday loan business."

15 2. Under the agreement, Tucker and entities controlled by  
16 Tucker, and not The Miami, provided the capital to make loans, and  
17 The Miami and its entities were not responsible for any losses.  
18 Neither The Miami, nor any entity that it controlled, established or  
19 paid to acquire any part of Tucker's payday lending business.  
20 Tucker and others based in Overland Park, Kansas, and not The  
Miami, managed operations and created the loan approval criteria.  
All essential steps necessary for the approval of loans were  
performed in Overland Park, under the direction of Tucker and  
individuals ultimately reporting to Tucker.

21 3. Tucker, and others reporting to Tucker, using powers of  
22 attorney, opened or caused to be opened certain bank accounts in the  
names of entities controlled by The Miami. Neither The Miami nor  
any entity that it controlled exercised control over these accounts.

23 4. In certain state court litigations, a then representative of The  
24 Miami who was then also an officer of entities controlled by The  
25 Miami that were involved in the loan business submitted factual  
26 declarations. These declarations were false, in part, because they  
overstated the involvement of such former representative and that of  
The Miami and/or entities controlled by the Miami in the operations  
of the loan business.

27 See <https://www.justice.gov/usao-sdny/file/823666/download>.

28 ///

1           56. While each of the tribes nominally held bank accounts in the names of tribal-related  
2 entities, these accounts were in reality controlled by Tucker who used them to fund millions of  
3 dollars in personal expenses, including international trips, a private jet, and a professional auto  
4 racing team. Tucker also used the funds nominally in the tribes' portfolio accounts to enrich  
5 Defendants.

6           57. Through counsel, Tucker successfully secured the dismissal of multiple lawsuits by  
7 claiming that the tribes had substantive ownership and control of the lending entities and were thus  
8 protected by "tribal sovereign immunity," thereby enabling the illegal payday lending operations  
9 to continue for many years.

10 **Defendants' Activities with Tucker's Payday Lending Activities**

11           58. Selling Source and its subsidiaries, most notably Partner Weekly, were collectively  
12 embedded in the payday lending industry as a prominent lead generator, which attracted and found  
13 potential borrowers and then referred them – for a hefty fee – to lending entities which actually  
14 provided the customers with usurious loans. Selling Source euphemistically referred to these  
15 payday lenders as "specialty lenders." For many years, Defendants provided customer leads and  
16 related information to the web of payday lending companies centrally operated and controlled by  
17 Tucker in Kansas. Defendants received hundreds of millions of dollars from Tucker's illegal  
18 payday lending business.

19           59. From at least 2003 onwards, Selling Source was vital to the operation of Tucker's  
20 payday lending enterprise, providing Tucker entities with thousands upon thousands of consumer  
21 leads located throughout the nation. As the "lead generators," Defendants had the essential role  
22 of attracting and finding potential borrowers, collecting information from borrowers, and then  
23 referring them to the lenders. An overwhelming percentage of the borrowers to Tucker's websites  
24 arrived from "lead generators." This was principally done through Partner Weekly, but Defendants  
25 offered a variety of services to payday lenders. For instance, DataX provided consumer credit  
26 reporting and data verification services specifically for the payday lending industry.

27           60. Previously, Selling Source was co-owned (50%) by Tucker through Monitor Entity,  
28 Black Creek Capital.

1           61.     Tucker sold his ownership interest in Selling Source in December 2007, when the  
2 London Bay Defendants paid approximately \$90 million to acquire Selling Source. A true and  
3 correct copy of the Agreement and Plan of Merger and Purchase Agreement is attached as  
4 Exhibit C hereto and incorporated by reference.

5           62.     During Tucker's co-ownership of the Selling Source Defendants and at the time of  
6 the sale, the Selling Source Defendants' success and profitability were largely dependent upon  
7 Tucker's Overland Park operations. In fact, Alton Irby, Defendant London Bay's managing  
8 member, testified in Tucker's criminal trial that approximately 50% of Selling Source's revenue  
9 was derived from Tucker's payday lending business at the time of the sale. A true and correct  
10 copy of the transcript of Alton Irby's testimony on September 20, 2017 in *U.S. v. Tucker*, Case  
11 No. 16 Cr. 91 (PKC) is attached as Exhibit D hereto and incorporated by reference. *See* Exhibit D  
12 at 964.

13           63.     Pursuant to the purchase and sale agreement, Tucker sold his equity interests in  
14 Defendants Selling Source, Partner Weekly, and DataX to the London Bay Defendants. Prior to  
15 the sale, Tucker via his ownership of Black Creek Capital, had owned 50% of the following entities  
16 (which were thereafter merged into Selling Source):

- 17           a.     Absolute ROI, LLC;
- 18           b.     CashLoanNetwork.com, LLC;
- 19           c.     ePointMarketing, LTD f/k/a DL001;
- 20           d.     eTelMarketing, LLC;
- 21           e.     Extreme Traffic Team, LLC;
- 22           f.     Marquisnet, LLC;
- 23           g.     Mobile Sciences Knowledge Group, LLC;
- 24           h.     Optimized Contact Solutions, Ltd.; and
- 25           i.     Trendex Media, LLC.

26           64.     As part of the transaction, Tucker, on information and belief, like Defendant  
27 LaFavor and Defendant McKay, kept small ownership interests in the Selling Source Defendants.  
28 Tucker's ownership interests were Mandatorily Redeemable Preference Shares ("MRPs").

1           65. After the London Bay transaction, Defendants remained inextricably linked with  
2 and mutually dependent upon Tucker's Overland Park businesses. In fact, there was a specific  
3 provision in the purchase and sale agreement ensuring that Tucker continued to exclusively  
4 purchase leads from Selling Source after the sale to the London Bay Defendants. *See* Exhibit C at  
5 § 4.12(e); *see also* Exhibit D at 964-966.

6           66. Specifically, Selling Source had an exclusive contract with Tucker, under which  
7 the Tucker payday businesses were required for 10 years from the date of the Agreement (until  
8 December 2017) "to purchase all of its online leads from [Selling Source] and its Affiliates,  
9 consistent with past practice . . . ." Exhibit C at § 4.12(e).

10           67. Defendants fully understood that Tucker, and not anyone affiliated with a tribe,  
11 controlled, owned, and directed AMG Services, even though it was nominally a tribal entity. This  
12 point is made clear by Alton Irby's prior testimony. Mr. Irby swore under oath in summer 2009  
13 that he met with Tucker, whom he called "the owner and principal of AMG, Selling Source's  
14 largest customer." A true and correct copy of Alton Irby's Declaration dated August 11, 2009 and  
15 filed in *Selling Source, LLC v. Red River Ventures, LLC, et al.*, Case No. 2:09-cv-01491-JCM-  
16 GWF (D. Nev. Aug. 11, 2009) is attached as Exhibit E hereto and incorporated by reference. *See*  
17 Exhibit E at ¶ 8.

18           68. On information and belief, Defendants rarely, if ever, dealt with anyone associated  
19 with a tribe. To the contrary, "London Bay work[ed] consistently with the owner of AMG to help  
20 manage its relationship with Selling Source." *Id.* at ¶ 4. Defendants also understood that the entire  
21 operations were not located on tribal land, but rather in Overland Park, Kansas.

22           69. In fact, just as before, and consistent with the exclusive contract, Tucker remained  
23 Selling Source's largest customer after the transfer of ownership to the London Bay Defendants.

24           70. Defendants continued to be paid millions upon millions of dollars for generating  
25 leads of potential borrowers who stood ready to accept one of Tucker's illegal loans from the  
26 entities over which Tucker exercised complete control and domination. For example, in London  
27 Bay's first year of ownership alone (2008), Selling Source was paid \$80 million by Tucker's AMG  
28 entity. *Id.* ¶ 4.



1           71.     In the 2009 sworn statement and in 2017 testimony in Tucker’s criminal trial, Mr.  
2 Irby confirmed just how important Tucker was as a partner to Selling Source. In his declaration  
3 submitted in litigation against Red River Ventures, LLC, whom Selling Source claimed were  
4 stealing leads that belonged exclusively to Tucker (the “Red River Litigation”), Mr. Irby stated  
5 that “Selling Source is dependent on AMG for the majority of its business.” *Id.* ¶ 19.

6           72.     In his declaration, Mr. Irby stated as follows:

7                   Selling Source’s largest customer is AMG, to whom it provides  
8 many services, primarily the sale of consumer leads; the leads sold  
9 to AMG are exclusive and proprietary to AMG as well as to Selling  
Source. London Bay works consistently with the owner of AMG to  
help manage its relationship with Selling Source.

10    *Id.* ¶ 4.

11           73.     By the time of the Red River Litigation, principals at London Bay, namely Mr. Irby  
12 and Sam Humphreys, the CEO of London Bay, had already developed a close personal relationship  
13 with Tucker dating back to at least 2006. For example, Mr. Irby and Mr. Humphreys routinely  
14 referred to Tucker as “partner.” In an April 2007 e-mail, Mr. Irby wrote to Tucker that he was  
15 “proud to have a partner as skilled as you.”

16           74.     When London Bay purchased Selling Source in December 2007, Mr. Irby wrote  
17 Tucker that: “We are proud to be your partners. Now we will make some money together instead  
18 of dealing with banks . . . .”

19           75.     Mr. Irby, Mr. Humphreys, and others associated with the London Bay Defendants  
20 also made trips to meet Tucker, including going to Tucker’s base of operations in Kansas.

21           76.     Tucker also invited Mr. Humphreys and Mr. Irby, whom he referred to as his “Good  
22 Luck Charms,” to his auto races and exchanged e-mails about Tucker’s racing prowess. For  
23 instance, after attending a race in May 2008, Tucker sent an article to Mr. Irby and Mr. Humphreys  
24 stating that “Tucker sweeps infineon wins both Saturday and Sunday.” Mr. Irby enthusiastically  
25 responded, “Unbelievable! You are the MAN!” Mr. Irby followed up with a second e-mail that  
26 day stating, “I don’t know that I have ever seen such a combination of skill, concentration and  
27 courage.”

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1           77. In particular, on information and belief, Tucker had a close and candid relationship  
2 with Mr. Humphreys. In one e-mail conversation in April 2009 with Mr. Humphreys, Tucker  
3 referred to Mr. Humphreys as the “master Deal Maker” and asked him about “interested suitors  
4 and [private equity] firms” and whether there was “any financial engineering magic available?,”  
5 to which Mr. Humphreys replied “Possibly” and that he was “working on it.”

6           78. Tucker also openly discussed concerns to Mr. Humphreys about the conduct of his  
7 colleague, Mr. Irby (whom the two of them referred to as the “Sand Man” or “SandMan”); in one  
8 exchange in the summer of 2009, Mr. Humphreys reassured Tucker that he “got [Mr. Irby] back  
9 in his cage.”

10           79. During the summer of 2009, Mr. Humphreys also kept Tucker apprised of  
11 discussions with the defendants in the Red River Litigation, whom Selling Source and Tucker  
12 claimed were “stealing leads (data) from the Selling Source server storage that houses the Selling  
13 Source/AMG proprietary information.” Exhibit E at ¶ 17. For instance, in a July 2009 e-mail, Mr.  
14 Humphreys wrote Tucker that, “They said they are marking up an agreement to present before  
15 they allow access to the servers. We said: “NO CONCESSIONS, NO NEGOTIATION. Come  
16 let us in, or we turn this over the authorities. They said they will respond shortly.”

17           80. Starting in 2009, a primary vehicle that Selling Source utilized to generate leads  
18 was its website, [www.moneymutual.com](http://www.moneymutual.com). In MoneyMutual’s advertisements, which relied upon  
19 celebrity spokesman Montel Williams, the company claimed to want “to help [people] live better  
20 physically, spiritually, financially, and emotionally,” by providing a resource for short-term loans  
21 “quickly and easily.” On information and belief, many of the consumers driven to Tucker’s payday  
22 lending businesses used that website. Selling Source advertised MoneyMutual to consumers  
23 nationwide in September 2009 through television, radio, print, online advertisements, and direct-  
24 to-consumer mailings.

25           81. On information and belief, many customer leads were for people located in states  
26 that prohibited the very types of loans that Tucker was selling, *i.e.*, small-dollar loans made by  
27 nonbank lenders which exceeded certain interest rate caps. The typical representative APR on

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1 Selling Source's MoneyMutual website ranged between 261% and 1304% for a 14-day loan, well  
2 in excess of the legal limit in numerous states where Selling Source offered its services.

3 82. Thus, Defendants understood that the absurd interest rates offered by the Tucker-  
4 related entities were causing direct harm to consumers across the nation.

5 83. Defendants understood that the interest rates offered by the Tucker-related entities  
6 also violated the usury laws of numerous states where consumer leads provided by Selling Source  
7 and related Defendants were provided to Tucker-related entities.

8 84. For instance, New York General Obligation Law § 5-501 and New York Banking  
9 Law § 14-a prohibit consumer loans under \$250,000 made by nonbank lenders with an interest  
10 rate exceeding 16%. Additionally, New York Banking Law § 340 prohibited unlicensed, nonbank  
11 lenders from soliciting and marketing consumer loans of less than \$25,000 with interest rates  
12 exceeding 16% per annum.

13 85. On information and belief, Selling Source continued to sell, profit from, and  
14 provide many customer leads to the Tucker's entities, even though it knew that the states where  
15 those customers were located had anti-usury/consumer protection laws, which the loans Tucker  
16 offered were violating. Based on the wealth of information available to them, Defendants knew  
17 or should have known that the Tucker entities were selling illegal loans to customers, which  
18 Defendants had provided.

19 **Defendants' Knowledge of Multiple Red Flags**

20 86. As detailed herein, Defendants had a multitude of opportunities to turn the spigot  
21 off, but did not do so, despite the existence of numerous – and mounting – red flags over many  
22 years. Instead, Defendants kept selling, profiting from, and providing these consumer leads to  
23 Tucker's payday lending enterprise, even long after the FTC brought charges against Tucker in  
24 April 2012.

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1 Knowledge of Tucker's Fraudulent Payday Lending Business During Tucker's Ownership of  
2 Selling Source

3 87. Prior to the sale of Selling Source to the London Bay Defendants, transfers made  
4 to Defendants were known, or should have been known, to be the proceeds of Tucker's fraudulent  
5 enterprise, given Tucker's central role, involvement in, and major ownership in Selling Source and  
6 related entities.

7 88. On information and belief, Defendant LaFavor and Defendant McKay received  
8 portions of these proceeds, and each knew or should have known that these proceeds, or at least a  
9 substantial portion thereof, were not theirs to keep.

10 Knowledge of Tucker's Fraudulent Payday Lending Business at the Time of the Sale to the London  
11 Bay Defendants in December 2007

12 89. Dating back to the time that Tucker sold Selling Source to the London Bay  
13 Defendants, there were already numerous red flags that should have given Defendants at that time  
14 great pause.

15 90. The Selling Source Defendants were already infected by their intimate familiarity  
16 with Tucker's Overland Park operations by his years of ownership and symbiotic business  
17 relationship that primed the pump of his fraudulent payday lending business.

18 91. The London Bay Defendants also had multiple warning signs as well as early as  
19 2007.

20 92. The due diligence that the London Bay Defendants performed prior to purchasing  
21 Selling Source and its subsidiaries was extensive, lasting apparently nine months. *See* Exhibit D  
22 at 981-982.

23 93. Given the overwhelming dependence of Selling Source on Tucker's business, on  
24 information and belief, any reasonable due diligence would have necessarily included an  
25 understanding of Tucker's business model, related regulatory and legal risks, and Tucker's  
26 personal background.

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1           94.     At the time of the purchase in 2007, the London Bay Defendants already had great  
2 familiarity with the payday lending industry generally, but through their due diligence, they  
3 learned or should have learned about the specific practices of Tucker's Overland Park businesses,  
4 including the exorbitant interest rates they charged consumers and their history operating at the  
5 margins of the law. Defendants also learned or should have learned that the Tucker payday lending  
6 business, in which Selling Source was actively participating to generate 50% of its revenues, was  
7 causing direct harm to thousands of consumers across the nation.

8           95.     At the time of the purchase at the end of 2007, Defendants also knew or should  
9 have known that Tucker and his payday lending businesses had been hounded by consumer  
10 complaints and state regulators for many years for running illegal payday lending operations that  
11 preyed upon vulnerable consumers by charging usurious interest rates. The regulatory landscape  
12 on a state-by-state basis – and the legal limits for short-term low dollar payday loans – were  
13 essential to their business model of providing customer leads. For instance, in 2003, the States of  
14 Kansas, Colorado, and California sued Tucker and some of his payday lending operations for  
15 violation of anti-usury laws.

16           96.     Such due diligence would likely have revealed that Tucker had previously been  
17 convicted of two federal felony charges of mail fraud and making a false statement to a bank as  
18 well as a felony charge in the State of Missouri for passing a bad check and as a result had served  
19 a year in Leavenworth federal penitentiary.

20 *Subsequent Red Flags During the London Bay Defendants' Ownership and Control of Selling*  
21 *Source*

22           97.     From the time of the purchase, Defendants' knowledge of the Tucker payday  
23 lending enterprise only grew. There was a deluge of additional troubling revelations from 2009  
24 on, all of which Defendants apparently ignored. Instead of investigating these red flags,  
25 Defendants' business with Tucker – and payments from Tucker – grew exponentially.

26 *First*, Defendants knew or should have known about the increasing media scrutiny that Tucker was  
27 receiving, particularly by fall 2011. As a prominent example, in September 2011, CBS News  
28 teamed with the Center for Public Integrity to release the results of a months-long investigation

1 regarding Tucker's payday lending business. *See, e.g.,*  
 2 <https://www.publicintegrity.org/2011/09/26/6605/payday-lending-bankrolls-auto-racers-fortune>;  
 3 [https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-](https://www.publicintegrity.org/2011/09/28/6656/race-car-driver-scott-tucker-drew-elaborate-facade-around-his-payday-loan-businesses)  
 4 [facade-around-his-payday-loan-businesses](https://www.cbsnews.com/news/how-payday-lenders-pull-off-crippling-rates/); [https://www.cbsnews.com/news/how-payday-](https://www.cbsnews.com/news/how-payday-lenders-pull-off-crippling-rates/)  
 5 [lenders-pull-off-crippling-rates/](https://www.cbsnews.com/news/federal-trade-commission-investigating-online-payday-lender-profiled-by-cbs-news/); and [https://www.cbsnews.com/news/federal-trade-commission-](https://www.cbsnews.com/news/federal-trade-commission-investigating-online-payday-lender-profiled-by-cbs-news/)  
 6 [investigating-online-payday-lender-profiled-by-cbs-news/](https://www.cbsnews.com/news/federal-trade-commission-investigating-online-payday-lender-profiled-by-cbs-news/).

7 98. On September 26, 2011, CBS News ran a story on this investigation in which  
 8 Armen Keteyian interviewed a victim of one of Tucker's portfolio companies, who had received  
 9 a payday loan with a 476% APR. The victim said that the lenders "can do whatever they want to  
 10 poor people like me." *See* <https://www.youtube.com/watch?v=yxqPJAFwFvs>.

11 99. When Mr. Keteyian attempted to visit Tucker's Overland Park operations where  
 12 three payday lenders supposedly owned by tribal entity AMG Services were located, he was turned  
 13 away and told by an employee that she was not at liberty to identify the owner. Mr. Keteyian then  
 14 noted that court papers in ongoing litigation in West Virginia and Colorado had identified Tucker  
 15 as a "key player" behind AMG Services, who was a convicted felon. *See id.*

16 100. This investigative reporting, by CBS and the Center for Public Integrity, including  
 17 two September 2011 articles, among other things, exposed the "strange commingling of the  
 18 interests of Tucker and the Indian Tribe." "Tucker is living the life of luxury and spending a  
 19 fortune on his racing hobby, while the tribes may only be getting a small piece of the revenue from  
 20 the business. . . . [The investigation] found evidence in court and public records that Tucker still  
 21 pulls the strings on the businesses he founded. . . . Most revealing of all, bank records show Tucker  
 22 and his brother Blaine were the only two people able to sign for four payday lending businesses of  
 23 one tribe."

24 101. *Second*, Defendants became aware only months later of the FTC's complaint filed  
 25 against Tucker and multiple related entities on April 2, 2012. *See FTC v. AMG Services*, ECF  
 26 No. 1 (Complaint). The FTC's complaint alleged, *inter alia*, that Tucker was at the center of a  
 27 massive common enterprise preying upon consumers through deceptive acts and practices and  
 28 other violations of the law by offering illegal payday loans requiring consumers to pay

1 significantly more than what had been represented to them. The FTC also alleged that Tucker  
 2 operated and controlled these business from Kansas with signatory authority on every corporate  
 3 bank account of both Monitor Entities *and* tribal entities.

4 102. Defendants knew about the FTC's allegations, because one of the parties initially  
 5 sued by the FTC in April 2012 was Defendant Partner Weekly.

6 103. Defendants actually participated in the FTC's lawsuit and were well aware of the  
 7 allegations. For example, on April 13, 2012, Partner Weekly filed an unopposed motion for  
 8 extension of time to respond to the FTC's motion for preliminary injunction and other equitable  
 9 relief. *FTC v. AMG Services*, ECF No. 16. On April 17, 2012, the FTC filed its executed summons  
 10 on Partner Weekly. *FTC v. AMG Services*, ECF No. 23. In May 2012, the FTC and Partner  
 11 Weekly agreed to stay the case as to Partner Weekly, and in July of 2012, the FTC stipulated to  
 12 the dismissal without prejudice of Partner Weekly.

13 104. In 2012, the FTC also served broad subpoenas upon Defendants seeking to uncover  
 14 a variety of records relating to Tucker and Tucker-related entities, given their central role in the  
 15 Tucker payday lending enterprise.

16 105. In summer 2012, certain defendants in the FTC case moved to quash the subpoenas  
 17 as to Selling Source and Partner Weekly (which the Court denied). In defending their issuance of  
 18 subpoenas to the Selling Source Defendants, the FTC noted the centrality of Partner Weekly and  
 19 Selling Source to the Tucker enterprise stating as follows:

20 As noted above, the FTC alleges that Defendants' borrowers are  
 21 deceived by the terms of their online loans.

22 The Lending Defendants have themselves stated that an  
 23 overwhelming percentage of their borrowers arrive to their websites  
 24 from "lead generators." (5/4/12 Lending Defendants' Memorandum  
 25 in Opposition to Motion for Protective Order at 11.) In the case of  
 payday loans, lead generators attract and find potential borrowers,  
 collect information from them, and then refer the potential  
 borrowers to lenders who actually provide the loans. (*Id.*; *see also*  
 note 4, *infra.*)

26 Partner Weekly, LLC ("Partner Weekly") is a prominent lead  
 27 generator for the online payday lending industry, and a major  
 28 supplier of borrowers for the Lending Defendants. Indeed, Partner  
 Weekly was formerly 50% owned by Black Creek Capital (a  
 Defendant here) (Docket No. 5-28 at 18), which in turn is 100%



owned by Scott Tucker (another Defendant here) (Docket No. 58 at 1-2). Partner Weekly therefore has a longstanding relationship with the Lending Defendants. Partner Weekly is affiliated with DataX, Ltd. ("DataX") (which provides consumer credit reporting and data verification services specifically for the payday lending industry). The parent company of Partner Weekly and DataX is Selling Source, LLC ("Selling Source"). Selling Source and/or Partner Weekly operate a website named [www.moneymutual.com](http://www.moneymutual.com), one of the lead generators from which many of the FTC's consumer declarants were driven to the Lending Defendants' deceptive loans. **Partner Weekly, DataX, and Selling Source have been (and continue to be) important figures for Defendants' operations, and the FTC therefore issued subpoenas to all three entities.**

*FTC v. AMG Services*, ECF. No. 143 (Plaintiff's Opp. To Defs' Mot. To Quash DataX, Partner Weekly, and Selling Source Subpoenas) at 3 (emphasis added).

106. Accordingly, Defendants were well aware of the allegations that the FTC was raising charges against Tucker, the Monitor Entities, and the tribal entities, but Defendants continued to work with and profit handsomely from its sales to Tucker's illegal payday lending business.

107. *Third*, Defendants knew or should have known about the increasing pressure that multiple state regulators were applying not only to Tucker's payday lending business, but also to Selling Source itself, based on its questionable practices and assistance to shady lenders such as Tucker's entities.

a. For example, since 2003, the Colorado Attorney General had been investigating Tucker's online payday lending companies, but had been stymied by the elaborate efforts to conceal Tucker's involvement in the enterprise and the invocation of "sovereign immunity." In the Colorado litigation in 2011 and 2012, if not earlier, the state regulators were publicly claiming that the tribal involvement was a sham as Tucker owned and operated these payday lending businesses. During this litigation, a court issued a contempt citation to Tucker for his non-appearance.

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- 1           b.     In 2010, Pennsylvania’s Department of Banking, Bureau of Compliance,  
2                     Investigation, and Licensing asserted that Selling Source through its  
3                     marketing and internet activities was violating consumer protection laws by  
4                     engaging in unlicensed activity by assisting lenders such as the Tucker  
5                     entities make illegal payday loans to Pennsylvania residents at astronomical  
6                     interest rates well in excess of the State’s 6% cap on interest rates.  
7                     Ultimately, in 2011, Selling Source paid a penalty and entered into a consent  
8                     decree, agreeing not to target Pennsylvania residents in its advertisements  
9                     or otherwise make its products available to Pennsylvania residents.
- 10          c.     The State of New York conducted an investigation of Defendants and sent  
11                     Selling Source a subpoena in 2013, and later entered into a consent decree  
12                     with Selling Source in 2015 to resolve similar allegations for the relevant  
13                     time period.

14          108.   *Fourth*, Defendants knew or should have known that while each of the tribes  
15                     nominally held bank accounts in the names of tribal-related entities, these accounts were in reality  
16                     exclusively controlled by Tucker who used the accounts to fund millions of dollars in personal  
17                     expenses, including multiple international trips, a private jet, and the expenses of his professional  
18                     auto racing team. As evidence of this, Alton Irby submitted a declaration in the Red River  
19                     Litigation in 2009 describing Tucker as “the owner and principal manager of AMG, Selling  
20                     Source’s largest customer.” *See* Exhibit E ¶ 8.

21          109.   This mountain of alarming information put Defendants on notice to inquire whether  
22                     Tucker, the Monitor Entities, and/or the tribal entities were engaging in a fraudulent common  
23                     enterprise and whether any funds received by Defendants at the direction of Tucker from Kansas  
24                     had been made or could be made in good faith. Despite the continued presence of the mounting  
25                     red flags, Defendants failed to conduct a sufficient inquiry into the bona fides of Tucker’s payday  
26                     lending enterprise and whether the large transfers being made to them from Kansas had a  
27                     fraudulent purpose or nature.

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110. Nor, on information and belief, did the Defendants ever refuse to accept or return any payments based on its concerns about the bona fides of Tucker or his operations.

111. In short, Defendants had intimate knowledge of and familiarity with Tucker's business practices and Tucker's control of and domination over the entire Overland Park operations, including the tribal entities. Through Defendants' relationship with Tucker and Tucker-related entities, all the while receiving millions of dollars, Defendants were placed on inquiry notice of potential misconduct, fraud, or otherwise illegal conduct by Tucker and/or Tucker entities in connection with his payday lending operations. Defendants failed to conduct a sufficient inquiry into the bona fides of Tucker's payday lending enterprise and whether the large transfers being made to them from Tucker-controlled entities had a fraudulent purpose or nature.

112. Defendants should have evaluated whether they could in good faith continue to provide Tucker and his companies with their services, including provision of consumer leads. They also should have investigated whether any funds received by Defendants at the direction of Tucker had been made or could be made in good faith. On information and belief, Defendants never undertook any such investigation, but instead kept receiving monies and assets that rightfully belong to the Monitorship Estate. The precise point in time when Defendants either had such knowledge or when these growing red flags placed Defendants on such inquiry notice will be determined in discovery.

113. Even after the public revelations and the FTC's lawsuit, Defendants remained interconnected with and steadfastly behind their largest customer and lucrative partner.

**Tucker's Transfers of Monitor Assets to Defendants**

114. On information and belief, from his base of operations in Overland Park, Kansas, and using funds in bank accounts which he exclusively controlled and dominated, Tucker directed hundreds of millions of dollars in payments to Defendants in a variety of ways described herein.

115. Over a period lasting nearly a decade, Defendants received hundreds of million dollars in the form of transfers of the assets rightfully belonging to Monitorship Estate. These transfers were all made at the specific direction of Tucker. These transfers took many forms and were from and to many different entities. Based on currently available Monitor Entities' records,

1 a list of payments that were sent to Defendants is attached as Exhibit F hereto and incorporated by  
2 reference.

3 116. Tucker controlled the bank accounts for all the Monitor Entities and the tribal  
4 entities. Only Tucker (and not anyone associated with the tribes) had complete control, access to,  
5 and authority over all of the funds in these bank accounts.

6 117. One thing, however, remained constant: each transfer was made at the specific  
7 direction of Tucker, based out of the same location in Kansas as the entities he controlled, and  
8 using funds at bank accounts he too controlled. Whether those accounts were nominally in the  
9 name of tribal entities, Monitor Entities, or other companies, Tucker had complete control over  
10 them.

11 118. Defendants knew or should have known that the money received from Tucker's  
12 operations was not rightfully theirs to keep. Rather, that money belonged to the Monitorship Estate  
13 and were the proceeds of an ongoing fraudulent enterprise being centrally operated out of Kansas  
14 and directed by Tucker.

15 *Transfers of Assets to Defendants prior to the London Bay Defendants' Ownership and Control*

16 119. From at least 2003 until December 2007, in an amount to be determined during  
17 discovery, Tucker caused numerous payday lending entities controlled by him to make fraudulent  
18 transfers to Defendants. At the time of the sale, these payments constituted approximately 50% of  
19 Selling Source's revenues.

20 120. The precise amount of such payments will be determined during discovery. On  
21 information and belief, these payments are in excess of \$150 million. *See id.*

22 121. As the Selling Source Defendants knew or should have known, the funds Tucker  
23 directed and caused to be paid to them during this time period were assets of Monitorship Estate  
24 that were fraudulently obtained proceeds from Tucker's illegal payday lending businesses.  
25 Defendants had no good faith basis for receiving and keeping these funds belonging to the  
26 Monitorship Estate. Moreover, on information and belief, these payments were not compensation  
27 for any legitimate services provided by Defendants and/or did not constitute reasonably equivalent  
28 value in exchange for any services rendered.

1           122. On information and belief, Defendants LaFavor and McKay received certain  
2 proceeds of the fraudulent enterprise. Given their close relationship with Tucker, and the central  
3 role that Tucker and his Overland Park enterprise had for Selling Source's business, Defendants  
4 LaFavor and McKay knew or should have known that they could not take these funds, or at least  
5 a substantial portion thereof, in good faith as they rightfully belonged to the Monitorship Estate.

6 Transfers of Assets to Defendants during London Bay Defendants' Ownership and Control

7           123. After the London Bay Defendants purchased the equity stakes from Tucker and  
8 other parties in December 2007, Tucker continued to make millions of dollars in payments to  
9 Defendants through at least the end of 2012.

10           124. Either from the inception of these payments, or at a point to be determined in  
11 discovery, these payments were fraudulent transfers, which rightfully belong to the Monitorship  
12 Estate.

13           125. The precise amount of such payments will be determined during discovery. On  
14 information and belief, these payments are in excess of \$300 million. *See id.*

15           126. Indeed, tens of millions of dollars in transfers were even made after the FTC filed  
16 its complaint against Tucker in April of 2012 – a copy of which was served on Defendant Partner  
17 Weekly who was a defendant in the case.

18 Other Transfers of Monitorship Assets to Defendants

19           127. On information and belief, there were additional transfers of the assets of the  
20 Monitorship Estate, including additional monetary transfers and gifts, made to Defendants at the  
21 direction of Tucker, which also constitute fraudulent transfers and rightfully belong to the  
22 Monitorship Estate. The details of these transactions shall be learned through discovery in this  
23 case. On information and belief, these payments were not compensation for any legitimate  
24 services provided by Defendants and/or did not constitute reasonably equivalent value in exchange  
25 for the services rendered by Defendants. Defendants knew or should have known at the time of  
26 the transfers the fraudulent purpose and nature of the transfers, and Defendants certainly would  
27 have discovered the fraudulent nature and purpose of the transfers if they had conducted even the  
28 most minimal or cursory inquiry into the matter.

**COUNT I**

**FRAUDULENT TRANSFER**

**(Against All Defendants)**

128. The Monitor repeats and realleges the allegations of each and every one of the prior paragraphs, inclusive, as if fully set forth herein.

129. The States of Kansas has adopted a version of the Uniform Fraudulent Transfers Act (“UFTA”) that is substantively identical to the UFTA. *See* K.S.A. § 33-201 *et seq.*

130. Under the law of Kansas, and the UFTA, fraudulent transfers include those where the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor. *See* K.S.A. § 33-204(a)(1); *see also* 11 U.S.C. § 548(a).

131. Based on the factual allegations above, Tucker directed that assets in the form of funds that rightfully belonged to the Monitorship Estate be transferred to Defendants with the actual intent to hinder, delay, or defraud creditors of the Monitorship Estate. These fraudulent transfers are voidable pursuant to the Kansas Uniform Fraudulent Transfer Act § 33-204(a)(1) and § 33-207(a)(1).

132. Accordingly, the Monitor seeks to recover as fraudulent transfers of Monitorship Estate assets, including all funds and gifts received by Defendants at the direction of Tucker from Monitor Entities, tribal entities, and other entities which Tucker dominated and controlled. The Monitor therefore requests that the Court order Defendants, jointly and severally, to pay to the Monitor all fraudulent transfers of funds they received, and to transfer to the Monitor all gifts received, as alleged herein and as further shown by proof at trial.

133. The Monitor further asks that he be awarded pre- and post- judgment interest from Defendants from the date of the receipt of each fraudulent transfer.

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**COUNT II**

**QUASI-CONTRACT CLAIM FOR RESTITUTION**

**BASED ON UNJUST ENRICHMENT**

**(Against All Defendants)**

134. The Monitor repeats and realleges the allegations of each and every one of the prior paragraphs, inclusive, as if fully set forth herein.

135. Here, the transfers of funds or assets of the Monitorship Estate to Defendants at the direction of Tucker to Defendants, constitute benefits conferred upon Defendants.

136. These benefits were not conferred upon Defendants as the result of any explicit contract with Defendants.

137. The Monitorship Estate did not receive equivalent value in return for the benefits conferred upon Defendants.

138. Defendants have not returned these benefits to the Monitorship Estate, and have retained these benefits unjustly.

139. Defendants' retention of the benefits of the assets of Monitorship Estate comes at the cost of the victims of Tucker's fraudulent common enterprise, whom would be entitled to the benefits as restitution.

140. Under the circumstances alleged above, the funds and gifts constitute unjust enrichment and they must be returned to the Monitorship Estate.

141. Because of Defendants' unjust enrichment, the Monitor seeks an equitable remedy ordering that Defendants are holding, and shall continue to hold, in constructive trust for the Monitor the entire amount of the payments and gifts made to Defendants that rightfully belong to the Monitorship Estate.

142. The Monitor is entitled to recover prejudgment interest from Defendants from the date of the receipt of each gift or payment.

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**COUNT III**

**REQUEST FOR ACCOUNTING BY DEFENDANTS**

**(Against All Defendants)**

143. The Monitor repeats and realleges the allegations of each and every one of the prior paragraphs, inclusive, as if fully set forth herein.

144. To ascertain the exact amounts of the assets of the Monitorship Estate received by Defendants at the direction of Tucker, including, but not limited to, all Monitor Entities, tribal entities, and related entities, and to recover the amounts subsequently transferred by Defendants to others, the Monitor seeks entry of an order compelling Defendants to file with the Court and serve upon the Monitor an accounting, under oath, detailing the amounts received from Tucker, all accounts holding Monitorship Estate assets, including, but not limited to, all Monitor Entities, tribal entities, and related entities; the current locations of the amounts, including the specific bank accounts where the distributions are held; the persons or entities with control over the accounts; and the location of any assets purchased or acquired with those moneys.

**JURY DEMAND**

The Monitor demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, the Monitor respectfully prays for judgment against Defendants as follows:

1. For the return of funds acquired by Defendants through fraudulent transfers and/or unjust enrichment of the Monitorship Estate's assets, including funds acquired as purported obligations supposedly owed to the Defendants by the Monitor Entities, tribal entities, and other Tucker-controlled entities;
2. For imposition of a constructive trust in favor of Plaintiff as to all funds and gifts received by Defendants at the direction of Tucker from the Monitor Entities, tribal entities, and other Tucker-controlled entities;
3. For a judgment ordering Defendants to file an accounting, under oath, as requested herein;

4. For pre- and post- judgment interest;
5. For attorneys' fees, and costs, to the extent permitted by law; and
6. For such other and further relief as the Court may deem proper.

Dated: November 29, 2017

MCNAMARA SMITH LLP

By: /s/ Edward Chang  
Edward Chang  
Attorneys for Thomas W. McNamara,  
Court-Appointed Monitor